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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

* * *

NO. 74-676

* * *

W. J. ESTELLE, JR., DIRECTOR
TEXAS DEPARTMENT OF CORRECTIONS,
Petitioner

V.

HARRY LEE WILLIAMS,
Respondent

* * *

REPLY TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

* * *

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10

SUBJECT INDEX

Page

OPINION BELOW..... 1

STATEMENT OF THE CASE..... 1

REASONS FOR NOT GRANTING THE WRIT..... 2

1. Reply to Point One: The Holding Of The United States Court Of Appeals For The Fifth Circuit That Trial In Jail Clothing Destroys A Defendant's Presumption Of Innocence And Thereby Deprives Him Of a Fair Trial Is Sound..... 2

2. Reply To Point Two: The Fifth Circuit's Holding That A Trial In Jail Clothes Denies A Defendant A Fair Trial Will Not Have A Catastrophic Impact On The Administration Of Justice..... 3

3. Reply To Point Three: There Is No Conflict Between The Circuit Courts.... 3

CONCLUSION..... 4

PROOF OF SERVICE..... 5

AFFIDAVIT..... 6

INDEX OF AUTHORITIES

CASES — Page

Anderson v. Watt, 475 F.2d 881 (10th Cir. 1973)..... 3

Brooks v. State of Texas (5th Cir. 1967)..... 2

Bentley v. Crist, 469 F.2d 854 (9th Cir. 1972)..... 4

Gaito v. Brierley, 485 F.2d 86 (3rd Cir. 1973)..... 4

Garcia v. Beto, 452 F.2d 655 (5th Cir. 1972)..... 2, 3

Goodspeed v. Beto, 460 F.2d 398 (5th Cir. 1972)..... 2

Hall v. Cox, 344 F.Supp. 786 (W.D.Va. 1971)..... 4

Hernandez v. Beto, 443 F.2d 634 (5th Cir. 1971), cert. den. 404 U.S. 897 (1971)..... 2, 3

Hollins v. Beto, 467 F.2d 951 (5th Cir. 1972)..... 2

Lemons v. United States, 489 F.2d 344 (3rd Cir. 1974)..... 4

McFalls v. Peyton, 270 F.Supp. 577 (W.D.Va. 1967), aff'd on other grounds 401 F.2d 890 (4th Cir. 1968) cert. den. 394 U.S. 951 (1969)..... 4

INDEX OF AUTHORITIES - - Continued

CASES	Page
Thomas v. Beto, 474 F.2d 981 (5th Cir. 1973)	2
United States v. Fideler, 457 F.2d 921 (5th Cir. 1972)	2
United States ex rel Stahl v. Henderson, 472 F.2d 556 (5th Cir. 1973)	2
United States v. Williams, 498 F. 2d 547 (10th Cir. 1974)	3
Watt v. Page, 452 F.2d 1174, 405 U.S. 1070; 31 LEd.2d 803, cert. den.	3
Williams v. Beto, 364 F.Supp. 335, 343 (SD Tex. 1973)	2
Williams v. State, 477 S.W.2d 24 (Tex. Crim. 1972)	3

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The Respondent, Harry Lee Williams, respectfully prays that the Petition for a Writ of Certiorari as prayed for by the Petitioner, W. J. Estelle, Jr. be denied.

OPINION BELOW

The opinion delivered in the court below which reversed Respondent's conviction is reported at 500 F.2d 206 (1974) and is appended to the Petition as Appendix "A". The opinion of the United States District Court for the Southern District of Texas, which, denied Respondent's application for a writ of habeas corpus, is reported at 364 F.Supp. 335 (1973), a copy of which is appended to the Petition as Appendix "B". A copy of the opinion of the Court of Criminal Appeals of Texas which affirmed the Respondent's conviction is appended to the Petition as Appendix "C".

STATEMENT OF THE CASE

Respondent accepts Petitioner's statement of the case as found in its Petition. Respondent does not accept

Petitioner's statement of the Rule in the Fifth Circuit nor his statement of the law in these United States.

The established Rule in the Fifth Circuit holds that the trial of an accused dressed in prison clothes infringes upon the fundamental right to the presumption of innocence. This line of authority is found in nine cases beginning with Brooks v. Texas, 381 F.2d 619 (1967); Hernandez v. Beto, 443 F.2d 634 (1971); Garcia v. Beto, 452 F.2d 655 (1971); U.S. v. Fideler, 457 F.2d 921 (1972); Goodspeed v. Beto, 460 F.2d 398 (1972); Hollins v. Beto, 467 F.2d 951 (1972); U.S. ex rel Stahl v. Henderson, 472 F.2d 556 (1973); and ending with the decision in Thomas v. Beto, 474 F.2d 981 (1973), rendered the year before the decision in the case upon appeal. A reading of these cases makes it apparent that the test in the Fifth Circuit is whether the Petitioner (1) willingly, intelligently, and knowingly waived his right to not be tried in prison garb and, if not, was the probable impact upon the jury by trying him in prison garb harmless beyond a reasonable doubt, (2) taking into consideration whether all material facts lead unerringly to Defendant's guilt.

REPLY TO PETITIONER'S REASONS FOR GRANTING THE WRIT

1. Reply to Point One: The holding of the United States Court of Appeals for the Fifth Circuit concerning trial of a Defendant in jail clothes is sound.

Petitioner predicates his argument upon the statement "the fact that a Defendant wore jail clothes during a jury trial does not create a negative inference". Respondent strongly disagrees. A man accused of crime is entitled to the appearance, dignity, and self-respect of a free and innocent man. For the Defendant to stand a trial in prison clothes suggests all kinds of things: poverty, dangerous character, that Defendant is worthless, guilty, or has been re-arrested, and a host of other negative inferences.

In the trial of this case in the United States District Court, Respondent's Exhibit No. 7 showed that every Defendant (during a stated term of court) not released on bond was tried before a jury in prison garb. The United States District Court found that the records clearly showed that there existed a practice to try incarcerated defendants ("all non-bailed defendants") in prison garb. Williams v. Beto, 364 F.Supp. 335, 343 (SD Tex. 1973).

Further, the Petitioner requests this Court to assume that a Defendant's appearance in jail garb always renders a jury sympathetic to the Defendant. Such an assertion does not square with court-room experience, for what will affect one juror one way may very well affect his companion juror in quite the other.

2. Reply to Point Two: The Fifth Circuit's holding will not have a catastrophic impact upon the administration of justice.

Anytime a novel point of law is resurrected, inmates are going to file applications for relief based upon the particular point. However, the percentage of inmates to which the "Hernandez" doctrine could apply, is extremely small. The Hernandez Rule can only apply to those cases tried before a jury, on a plea of not guilty, with a record complete enough to prove that the Defendant was tried unwillingly in jail clothes, and which trial resulted in a guilty verdict. It is apparent, therefore, that this particular rule is one of very narrow application.

3. Reply to Point Three: This court should not grant Certiorari because there is no conflict between the Circuit Courts.

Petitioner asserts that the Tenth and Fourth Circuits have reached decisions on the jail clothes issue which conflict with the holdings in the Fifth Circuit.

Respondent has located three Tenth Circuit cases on the issue at bar. In Watt v. Page, 452 F.2d 1174 (Tenth Circuit, 1972), 405 US 1070, 31 LEd 2d 803, cert. den., the court stated that it did not agree with the Fifth Circuit holding in Hernandez to the extent that it appeared to require an automatic reversal if a Defendant proved he was tried in jail clothing. (At page 1175.) The case was returned to the U.S. District Court for an evidenciary hearing, at which the District Court found the Defendant to be prejudiced because he was tried in jail clothes. The Tenth Circuit then affirmed the lower court's finding of prejudice. Anderson v. Wyatt, 475 F.2d 881 (Tenth Circuit, 1973). The same rule was applied the next year in U.S. v. Williams, 498 F.2d 547 (Tenth Circuit, 1974). This case and Garcia v. Beto, 452 F.2d 655 (Fifth Circuit, 1971) reach precisely the same result. That there is no real conflict between the Tenth and the Fifth Circuits is seen by a careful reading of the explanatory language by the Fifth Circuit when it stated, upon re-hearing, that "a Defendant may not remain silent and willingly go to trial in prison garb and thereafter claim error". Hernandez v. Beto, 443 F.2d 634, 637.

Petitioner has not complied with Rule 19 (1) (b) by his failure to show a conflict between the Fourth and Fifth Circuits. Those cases upon which the Petitioner relies to support a conflict between those two circuits are McFall's v. Peyton, 270 F.Supp. 577 (W.D.Va. 1967) and Hall v. Cox, 344 F.Supp. 786 (W.D.Va. 1971). Not only are both of those cases District Court decisions, but they are pre-Hernandez cases. They are predicated on cases which Hernandez specifically disapproved. McFall's v. Peyton was affirmed, but on other grounds, at 401 F.2d 890 (Fourth Circuit, 1968) cert. den. 394 US 951 (1969).

Therefore, not only is there no Fourth Circuit cases on the issue to conflict with the Fifth Circuit Rule, but the Tenth Circuit decisions quite clearly square with the holdings in the Fifth Circuit. Besides that, the Third and Ninth Circuits agree with the Fifth Circuit.

The Third Circuit accepted the majority view in Gaito v. Brierly, 485 F.2d 86 (Third Circuit, 1973), that compelling a Defendant to appear before a jury in his prison clothes unconstitutionally infringes his due process right to be presumed innocent until proven guilty. (At page 88.) This holding is reaffirmed in Lemons v. U.S., 489 F.2d 344 (Third Circuit, 1974).

The Ninth Circuit has denounced the practice of trying a prisoner in jail clothes in stronger terms. In Bentley v. Crist, 469 F.2d 854 (Ninth Circuit, 1973), the court critized the trial Judge's finding that trying the accused in jail garb did not amount to a denial of the Constitutional right to presumption of innocence. The Ninth Circuit stated, "This is contrary to the weight of authority in State and Federal Courts". Further, the court rejected the State of Montana's argument that the presumption of innocence is impermissibly impaired only when the accused is denied access to readily available civilian clothing. (At page 856.)

In conclusion, the lower court's decision was correct and did justice. Its holding will further prevent the continued abuse, or worse, the reinstitution of trials of indigence in prison clothes. It would, therefore, serve justice and further help guarantee the purity of trial by jury for this court to deny Petitioner's application for a Writ of Certiorari.

Respectfully submitted,

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HARRY LEE WILLIAMS,

RESPONDENT

A F F I D A V I T

STATE OF TEXAS, COUNTY OF Walker.

I, HARRY LEE WILLIAMS, Petitioner in the foregoing cause, do hereby state on Oath that I am unable to pay the costs incident to this proceeding or any other proceedings in relation to this cause, or to give security therefor.

Harry Lee Williams

HARRY LEE WILLIAMS

BEFORE ME, the undersigned authority, on this day personally appeared HARRY LEE WILLIAMS who stated on Oath that the foregoing is true and correct to witness which my hand and seal of office on this the 11 day of December, 1974.

Wilfred J. Burkeen

NOTARY PUBLIC in and for the County of WALKER, State of Texas.